

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PERSONALWEB TECHNOLOGIES, LLC.
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

v.

NEC CORPORATION OF AMERICA, INC.,

Defendant.

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Civil Action No. 6:11-cv-00655 (LED)

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC.
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

v.

GOOGLE INC. AND YOUTUBE, LLC.

Defendants.

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Civil Action No. 6:11-cv-00656 (LED)

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC.
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

v.

NETAPP, INC.

Defendant.

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Civil Action No. 6:11-cv-00657 (LED)

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC.
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

V.

AMAZON.COM, INC.; AMAZON WEB SERVICES LLC; AND DROPBOX, INC.,

Defendants.

Civil Action No. 6:11-cv-00658 (LED)

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC.
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

V.

EMC CORPORATION AND VMWARE,
INC.,

Defendants.

Civil Action No. 6:11-cv-00660 (LED)

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC.
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

V.

AUTONOMY, INC., HEWLETT-PACKARD
COMPANY, AND HP ENTERPRISE
SERVICES, LLC,

Defendants.

Civil Action No. 6:11-cv-00661 (LED)

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

YAHOO! INC.

Defendant.

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Civil Action No. 6:12-CV-00658-LED

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

APPLE INC.

Defendant.

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Civil Action No. 6:12-CV-00660-LED

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

FACEBOOK INC.

Defendant.

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Civil Action No. 6:12-CV-00662-LED

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

MICROSOFT CORPORATION

Defendant.

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Civil Action No. 6:12-CV-00663-LED

JURY TRIAL DEMANDED

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

In accordance with Patent Rule 4-3, the parties hereby submit their Joint Claim Construction and Prehearing Statement for the constructions of terms, phrases, and clauses for U.S. Patent Nos. 5,978,791, 6,415,280, 6,928,442, 7,802,310, 7,945,539, 7,945,544, 7,949,662, 8,001,096, and 8,099,420 (“Patents at Issue”).¹ In accordance with Patent Rule 4-2(c), the parties met and conferred for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

A. Agreed-Upon Constructions

Exhibit A provides the construction of those claim terms, phrases, or clauses on which some of the parties agree.

B. Disputed Claim Constructions

Exhibit B, attached hereto, identifies the disputed claim terms and provides PersonalWeb’s and Defendants’ respective proposed constructions and an identification of intrinsic and extrinsic evidence supporting their proposed constructions, as required by P.R. 4-3(b).

C. Anticipated Length of Time for the Claim Construction Hearing

PersonalWeb’s Statement: The Parties anticipate that the Claim Construction Hearing will take no longer than one court day, three hours per side.

Defendants’ Statement: Defendants will endeavor to coordinate wherever possible for oral argument, but anticipate that some issues may exist where Defendants have different

¹ PersonalWeb has asserted different patents and different claims against each of the Defendants in the serially-filed cases. Defendants’ proposals are with regard to the patents asserted by PersonalWeb against each Defendant, and for which PersonalWeb has provided infringement contentions. To the extent a particular claim term has not been identified for construction in the case against a particular Defendant, that Defendant takes no position as to those claim terms.

positions – due in part, for example, to the fact that PersonalWeb has asserted different claims against different defendants with respect to different products. PersonalWeb’s suggestion that it should be allotted three hours of argument time, while 16 separate Defendant entities should collectively be allotted only three hours of time, is unreasonable. Defendants propose that PersonalWeb be allotted two hours of argument time and that Defendants collectively be allotted four hours, to be divided among them as necessary.

D. Identification of Witnesses

PersonalWeb may offer the oral or written testimony of Kevin C. Almeroth and/or Robert Dewar, Ph. D. on the level of ordinary skill in the art and how such a person would interpret the patents in suit, and to support its proposed constructions.

Defendants Autonomy, Inc., Hewlett-Packard Company, and HP Enterprise Services, LLC may offer the oral or written testimony of Ethan L. Miller, Ph. D. on the level of ordinary skill in the art and how such a person would interpret the patents in suit, and to support their proposed constructions.

E. Other Issues

PersonalWeb’s Statement: PersonalWeb believes that prior to the claim construction hearing, the Court should require Defendants to select the 10 most important terms for the Court’s construction. At the outset of this case, PersonalWeb proposed a schedule to the original Defendants (the Defendants in Case Nos. 6:11-cv-00655 (LED); 6:11-cv-00656 (LED); 6:11-cv-00657 (LED); 6:11-cv-00658 (LED); 6:11-cv-00660 (LED); and 6:11-cv-00661 (LED)) by which PersonalWeb would have limited the number of asserted claims to 30 prior to the Markman hearing, provided that Defendants would agree to similar limitations on the number of prior art references asserted. Defendants rejected PersonalWeb’s proposal. Despite the fact that PersonalWeb has limited the number of claims at issue to less than 90 across all Defendants

(of the more than 600 claims in the asserted patents), Defendants collectively assert hundreds of prior art references and a massive number of potential obviousness combinations. PersonalWeb remains willing to engage in a process to reduce the number of asserted claims provided Defendants limit the number of asserted prior art references and obviousness combinations, and to select 10 claims for construction.

Defendants' Statement: Despite having access to many of the Defendants' technical documents and source code for at least several months (in some cases, more than eight months), PersonalWeb continues to assert 9 patents and approximately 90 claims against Defendants collectively. But, each case differs significantly in the patents asserted (between 1 and 9 patents-in-suit in any particular case) and the number of claims asserted (between 5 and 45 claims, depending on the case). In fact, several Defendants have asserted against them claims that are asserted against no other defendant. PersonalWeb's suggestion that the Court should require Defendants to select the 10 "most important terms" for the Court's construction is unreasonable. Defendants should not be required to limit the number of terms for construction unless and until PersonalWeb reduces the number of claims it is asserting against the Defendants. Notwithstanding these objections, however, if the Court is inclined to limit the number of terms to be construed to 10, Defendants will jointly select ten terms for purposes of the upcoming briefing and July hearing, but reserve the right to seek the Court's assistance with additional claim construction issues later in their respective cases, should the need arise.

DATED: March 18, 2013

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to FED. R. CIV. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by U.S. mail, on May 3, 2013.

/s/ Sam Baxter_____